



# **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

## **FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA)**

### **APPEAL DECISION**

*FEMA Flood Insurance Appeal Decision #C34*

## **OVERVIEW**

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The policyholders filed an appeal on February 2020, alleging their flood insurance carrier (hereinafter “insurer”) improperly denied part of their claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to covered property arising from Superstorm Sandy on October 2012.<sup>2</sup>

In its review, FEMA found the following facts relevant:

- At the time of the loss, the policyholders had \$250,000 of building coverage and \$100,000 of personal property coverage.
- The insured property is a post-FIRM (Flood Insurance Rate Map). single-family dwelling with two floors and elevated on an unfinished crawlspace, located in flood zone A06.<sup>3</sup>
- The policyholders filed a claim with the insurer and the insurer assigned an adjuster to inspect the property.
- On December 2012, the adjuster inspected the property and confirmed a general and temporary condition of flood existed.
- The adjuster recorded a waterline of 25 inches to the exterior of the building. Floodwater was limited to the crawlspace and did not reach the height of the first floor living area.
- The adjuster documented damages and prepared an estimate for the insurer.
- The insurer reviewed the adjuster’s estimate and issued the policyholders payments totaling \$48,214.83 for building damages and \$13,256.37 for personal property damages.
- In 2018, the policyholders submitted documents to the insurer and requested an additional payment under Coverage D - Increased Cost of Compliance of the SFIP. The policyholders filed the Increased Cost of Compliance portion of the claim on May 2018.
- In a letter to the policyholders dated January 2020, the insurer denied coverage for Increased Cost of Compliance benefits. The insurer stated the building does not qualify for Increased Cost of Compliance coverage because the building was already in compliance with floodplain requirements on the date of loss.

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<sup>1</sup> See 44 C.F.R. § 61.13 (2012); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter “SFIP”].

<sup>2</sup> The policyholders file this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholders’ claim. The policyholders’ appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholders Services Division, Appeals Branch [hereinafter “Appeal File”].

<sup>3</sup> For more information about flood zones, please see [www.fema.gov/flood-zones](http://www.fema.gov/flood-zones).

- The policyholders appeal the insurer's decision to deny coverage for Increased Cost of Compliance benefits. In support of their appeal, the policyholders submit an engineering statement and a substantial damage letter from the community.

## RULES

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The insurer agrees to pay the policyholders for direct physical loss by or from flood to insured property, provided the policyholders comply with all terms and conditions of the SFIP.<sup>4</sup>

The SFIP provides up to \$30,000 towards the costs of bringing a flood damaged structure into compliance with a state or community floodplain management law or ordinance affecting repair or reconstruction.<sup>5</sup> To be eligible for Increased Cost of Compliance benefits, a building sustaining a loss caused by a flood as defined by this policy must be a structure that has had flood damage in which the cost to repair equals or exceeds 50 percent of the market value of the building at the time of the flood. The state or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.<sup>6</sup>

## ANALYSIS

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On appeal, the policyholders appeal the insurer's decision to deny coverage for Increased Cost of Compliance benefits. The policyholders contend the building, at the time of loss, was not compliant with the community flood plain requirements.

The insurer agrees to pay the policyholders for direct physical loss by or from flood. Under Increased Cost of Compliance coverage, the SFIP agrees to pay up to \$30,000 toward the cost of bringing a flood-damaged structure into compliance with state or community floodplain management laws or ordinances that govern repair or reconstruction following a flood. To qualify for the Increased Cost of Compliance, the building must have had flood damage in which the cost to repair the flood damage equals or exceeds 50% of the market value of the structure at the time of the flood.

Here, the substantial damage letter states the policyholders' property sustained over 50 percent damage from Superstorm Sandy. The community based their determination on the engineer's report, architect's report, and the policyholders' contractor's estimate. FEMA notes the engineer, architect, and contractor reports do not state the 50 percent damage to the building was caused by or from flood. FEMA's review finds the substantial damage letter is insufficient to qualify for Increased Cost of Compliance because it does not state the 50 percent damage to the building was caused by or from flood, nor does it provide a basis of value used in its determination. Accordingly, FEMA's review finds the Increased Cost of Compliance requirement that 50 percent or more of the damage to the structure be caused by or from flood event was not met. Because this requirement was not met, FEMA finds the policyholders are not eligible for Increased Cost of Compliance.

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<sup>4</sup> See SFIP (I), (II)(B)(12).

<sup>5</sup> See SFIP (III)(D)(2).

<sup>6</sup> See SFIP (III)(D)(3)(a)(2).

FEMA's review finds the policyholders' building was not in compliance with flood plain requirements at the time of the loss. In their addendum, the engineer notes the first-floor elevation of the policyholders' building is at 8.54 feet, and the preliminary base flood elevation is 9 +1.<sup>7</sup> The policyholders submitted copies of two elevation certificates to the insurer. One elevation certificate, which has a July 2002 expiration date, shows the base flood elevation at 8 feet and the first elevated base flood elevation at 8.9, which is identified as the basis of the structure at the time of loss. The insurer determined the elevation certificate shows the policyholders' post-FIRM building was already in compliance with local community requirements based on datum conversion. However, FEMA's review notes the preliminary community base flood elevation is 9, with a one-foot freeboard requirement. Accordingly, FEMA's review finds the policyholders' building was not in compliance with flood plain requirements at the time of loss. FEMA notes the policyholders' building would qualify for Increased Cost of Compliance coverage if all other Coverage D conditions are met.

Based on the documents in the claim file, FEMA disagrees with the insurer's reason to deny Increased Cost of Compliance benefits. FEMA's review finds the policyholders' building was not in compliance with flood plain requirements at the time of loss. However, FEMA agrees with the insurer's decision to deny Increased Cost of Compliance benefits because the policyholders did not meet all Coverage D conditions to qualify for Increased Cost of Compliance benefits. FEMA's review finds the documentation in the claim file does not support the Increased Cost of Compliance's requirement that 50 percent or more of the damage to the structure be caused by or from flood. For these reasons, FEMA finds the insurer correctly denied coverage.

## CONCLUSION

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Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny Increased Cost of Compliance benefits.

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<sup>7</sup> See Appeal File, Engineer's Addendum Report.